IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15356 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHUPENDRAKAUR SURENDRASING CHAIRMAN OF SHIVDEEP COM.HOS. - Petitioner

Versus

TORRENT POWER CO.LTD. (AEC) THR' ITS CHAIRMAN & 1 - Respondents

==========

Appearance :

MRS NISHA M PARIKH for Petitioner.
NMR RM CHHAYA for Respondent : 2.
NOTICE SERVED BY DS for Respondent : 1.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 23/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Leave to amend the prayer clause is granted.

Rule. Mr.R.M.Chhaya, learned counsel, waives service of notice on behalf of the respondent No.2. The record indicates that though the respondent No.1 i.e. Torrent Power AEC Limited is duly served with notice for final disposal of the petition, it has neither appeared through its lawyer nor through its constituted agent, nor has filed reply controverting the averments made in the petition. Under the circumstances, this Court is of the opinion that it is not necessary for the petitioner to effect service of notice of rule issued in this petition upon the respondent No.1. Having regard to the facts of the case, the petition is taken-up for final disposal today.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondent No.1 i.e. Torrent Power AEC Limited to

supply electricity connection to five shops constructed by the petitioner in the Complex known as “Shivdeep Commercial Cooperative Housing Society Limited”, Shivdeep Avenue, Opp: Moni Hotel, Narol Road, Isanpur, Ahmedabad. The petitioner has further prayed to direct the respondent No.2 to grant Building Use Permission to the petitioner's Shivdeep Commercial Cooperative Housing Society Ltd.

3. The petitioner i.e. Ms. Bhupendrakaur Surendrasing is the Chairman of Shivdeep Commercial Co.op.Housing Society Limited, which is situated at Final Plot No.149/P, Shivdeep Avenue, Opp: Moni Hotel, Narol Road, Isanpur, Ahmedabad. Ms.Bhupendrakaur Surendrasing and others were owners of Sub-Plot Nos.1 to 6 of Final Plot No.149/P forming part of T.P.Scheme, which was introduced in Isanpur area. The owners of Sub-Plot Nos.1 to 6 were desirous of developing the plots belonging to them. Therefore, they applied to Ahmedabad Municipal

Corporation to permit them to develop their property. The Ahmedabad Municipal Corporation granted Commencement Letter (Rajachitthi) on March 18, 2005, which is quite evident from the contents of document produced at Annexure-C to the petition. Pursuant to the said Commencement Letter, the petitioner has constructed Commercial Complex. However, the record shows that the petitioner has been able to dispose of only five shops constructed by her. After construction of the Commercial Complex was over, it was obligatory for the petitioner to obtain Building Use Permission and thereafter to apply the respondent No.1 for supply of electricity connection to the premises constructed by her. However, without obtaining Building Use Permission, the petitioner applied to the respondent No.1 to supply electricity connection to the five shops which she was able to dispose of. The said request has been turned down by the respondent No.1, which is quite evident from the communication dated May 12, 2006 sent by the

General Manager, Customer Services, of the respondent No.1, to the petitioner. A copy of the said communication is produced by the petitioner at Annexure-A to the petition. By the said communication, the petitioner is called upon to produce Building Use Permission or conditional order of the High Court to enable the respondent No.1 to supply electricity connection to the five shops constructed by the petitioner. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

4. The petition was placed for admission hearing before the Court on July 28, 2006, and after hearing the learned counsel for the petitioner, notice for final disposal of the petition was issued making it returnable on August 22, 2006. As observed earlier, the respondent No.1 is duly served, but, it has neither appeared before the Court nor contested the petition.

5. This Court has heard Ms.Nisha M.Parikh, learned counsel for the petitioner, and Mr.R.M.Chhaya, learned counsel for the respondent No.2. This Court has also considered the documents forming part of the petition. Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if following directions are issued:

(1) The petitioner will approach the Ahmedabad Municipal Corporation for obtaining Building Use Permission within thirty days from today with a proper application/form/format and by paying requisite fee, if any.

(2) The Ahmedabad Municipal Corporation is directed to take decision on the application, which may be submitted by the petitioner, within four months from the date of receipt of the same.

(3) The petitioner shall apply to the

respondent No.1., i.e. Torrent Power AEC Limited, for providing electricity connection to the five shops constructed by her with a proper application/form/format and by paying charges within a week.

(4) The respondent No.1, i.e. Torrent Power AEC Limited, is directed to provide electricity connection to the five shops constructed by the petitioner within one month on usual terms and conditions.

(5) In case the Ahmedabad Municipal Corporation is not approached by the petitioner for obtaining Building Use Permission within the period stipulated in this order, the Ahmedabad Municipal Corporation shall inform the Torrent Power AEC Limited to disconnect the electricity supply made available to the five shops constructed by the petitioner and in such an eventuality, it would be

open to the Torrent Power AEC Limited to disconnect the electricity supply provided to the said five shops constructed by the petitioner within a period of fifteen days.

(6) In case the Ahmedabad Municipal Corporation does not grant Building Use Permission, it will ask the Torrent Power AEC Limited to disconnect the electricity supply provided to the five shops constructed by the petitioner within a period of fifteen days and, thereupon, it would be open to the Torrent Power AEC Limited to disconnect the electricity supply provided to the five shops constructed by the petitioner.

(7) The petitioner shall file an Undertaking before the Torrent Power AEC Limited to the effect that in the event the Building Use Permission is not granted by the Ahmedabad Municipal Corporation, the

petitioner will have no objection to disconnection of electricity supply provided to the five shops constructed by her. This Undertaking shall be filed along with the application/form/format meant for the purpose.

Rule is made absolute subject to above referred to directions. There shall be no order as to costs. Direct Service is permitted.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(patel)